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IN THE

Supreme Court of the United States

VICKIE LYNN MARSHALL,

Petitioner,

v.

E. PIERCE MARSHALL,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR AMICI CURIAE PROFESSORS OF LAW ERNEST A. YOUNG AND HEATHER ELLIOTT IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF AMICI 1

INTRODUCTION AND SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. FEDERAL COURTS LACK JURISDICTION TO ENTERTAIN ACTIONS THAT WOULD INTERFERE WITH STATE COURT PROBATE PROCEEDINGS 3

A. This Court Has Long Held That Federal Courts Have No Jurisdiction Over State-Law Probate Claims Whose Adjudication Would Interfere With State Court Probate Proceedings 3

B. The Probate Limitation Appropriately Construes The Grant Of Jurisdiction To Federal Courts Over State-Law Matters In Light Of Basic Principles Of Federalism And Comity 9

II. THE PROBATE LIMITATION APPLIES EQUALLY TO DISTRICT AND BANKRUPTCY COURTS EXERCISING "RELATED TO" BANKRUPTCY JURISDICTION 16

A. The Statutory Grant Of Jurisdiction 17

B. This Case Turns On The Scope Of Section 1334(b)'s Grant Of "Related To" Jurisdiction 20

TABLE OF CONTENTS—Continued

Page

C. Nothing In The Language Or Legislative History Of Section 1334(b)'s Grant Of "Related To" Jurisdiction Suggests That Congress Intended To Abrogate The Well-Established Limitation On Federal Jurisdiction Over State-Law Probate Matters 22

D. The Justifications For The Probate Limitation In Diversity Actions Are Equally Powerful In "Related To" Actions Heard In Bankruptcy Court 25

E. The Bankruptcy Abstention Provisions Do Not Implicitly Override The Limitation On "Related To" Jurisdiction Over Probate Matters 29

CONCLUSION 30

TABLE OF AUTHORITIES

CASES

Page(s)

A.H. Robins Co. v. *Piccinin*, 788 F.2d 994 (4th Cir. 1986) 27
American Fire & Casualty Co. v. *Finn*, 341 U.S. 6 (1951) 17
Ankenbrandt v. *Richards*, 504 U.S. 689 (1992) ..... *passim*
Arecibo Community Health Care, Inc. v. *Commonwealth of Puerto Rico*, 270 F.3d 17 (1st Cir. 2001) 17
Armstrong v. *Lear*, 25 U.S. (12 Wheat.) 169 (1827) 3, 4
BFP v. *Resolution Trust Corp.*, 511 U.S. 531 (1994) 2, 13, 14, 28
Bank of the United States v. *Deveaux*, 9 U.S. (5 Cranch) 61 (1809) 26
Barber v. *Barber*, 62 U.S. (21 How.) 582 (1859) 9
Barrow S.S. Co. v. *Kane*, 170 U.S. 100 (1898) 26
Byers v. *McAuley*, 149 U.S. 608 (1893) 4
Case of Broderick's Will, 88 U.S. (21 Wall.) 503 (1874) 4, 5, 12, 15
Celotex Corp. v. *Edwards*, 514 U.S. 300 (1995) 19, 20, 27
Commodity Futures Trading Commission v. *Schor*, 478 U.S. 833 (1986) 17
Dragan v. *Miller*, 679 F.2d 712 (7th Cir. 1982) 12, 15, 16
Elk Grove Unified School District v. *Newdow*, 542 U.S. 1 (2004) 10
Ellis v. *Davis*, 109 U.S. 485 (1883) 11, 12
Farrell v. *O'Brien*, 199 U.S. 89 (1905) 4, 5, 8
Fouvergne v. *New Orleans*, 59 U.S. (18 How.) 470 (1855) 4, 5
Franchise Tax Board v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983) 14
Golden v. *Golden*, 382 F.3d 348 (3d Cir. 2004) 6
Gonzales v. *Oregon*, 2006 WL 89200 (U.S. Jan. 17, 2006) 13
Harris v. *Zion Savings Bank & Trust Co.*, 317 U.S. 447 (1943) ..... *passim*

TABLE OF AUTHORITIES—Continued

Page(s)

Home Ins. Co. v. *Cooper & Cooper, Ltd.*, 889 F.2d 746 (7th Cir. 1989) 28
In re Boston Regional Medical Center, Inc., 410 F.3d 100 (1st Cir. 2005) 27
In re Burrus, 136 U.S. 586 (1890) 9, 10
In re Cuyahoga Equipment Corp., 980 F.2d 110 (2d Cir. 1992) 27
In re FedPak Systems, Inc., 80 F.3d 207 (7th Cir. 1996) 27
In re Gardner, 913 F.2d 1515 (10th Cir. 1990) 27
In re Pegasus Gold Corp., 394 F.3d 1189 (9th Cir. 2005) 27
In re Time Construction, Inc., 43 F.3d 1041 (6th Cir. 1995) 27
In re Toledo, 179 F.3d 1340 (11th Cir. 1999) 27
In re Wood, 825 F.2d 90 (5th Cir. 1987) 18, 19, 27
Integrated Health Services of Cliff Manor, Inc. v. *THCI Co.*, 417 F.3d 953 (8th Cir. 2005) 27
Langenkamp v. *Culp*, 498 U.S. 42 (1990) 17
Markham v. *Allen*, 326 U.S. 490 (1946) ..... *passim*
Medtronic, Inc. v. *Lohr*, 518 U.S. 470 (1996) 13
Merrell Dow Pharmaceuticals Inc. v. *Thompson*, 478 U.S. 804 (1986) 14, 15
Midlantic National Bank v. *New Jersey Department of Environmental Protection*, 474 U.S. 494 (1986) 24
Northern Pipeline Construction Co. v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982) 17, 19, 20, 25
Pacor, Inc. v. *Higgins*, 743 F.2d 984 (3d Cir. 1984) ... 19, 27, 28
Palmer v. *Massachusetts*, 308 U.S. 79 (1939) 28
Pegram v. *Herdrich*, 530 U.S. 211 (2000) 14
People's Bank v. *Calhoun*, 102 U.S. 256 (1880) 17
Princess Lida of Thurn & Taxis v. *Thompson*, 305 U.S. 456 (1939) 6
Rice v. *Santa Fe Elevator Corp.*, 331 U.S. 218 (1947) 14

TABLE OF AUTHORITIES—Continued

Page(s)

Shamrock Oil & Gas Corp. v. *Sheets*, 313 U.S. 100 (1941) 15
Solid Waste Agency of Northern Cook County v. *United States Army Corps of Engineers*, 531 U.S. 159 (2001) 14
Storm v. *Storm*, 328 F.3d 941 (7th Cir. 2003) 6
Sutton v. *English*, 246 U.S. 199 (1918) ..... *passim*
Tarver v. *Tarver*, 34 U.S. (9 Pet.) 174 (1835) 3, 4
United Mine Workers of America v. *Gibbs*, 383 U.S. 715 (1966) 26
United States v. *Bass*, 404 U.S. 336 (1971) 14
Williams v. *Benedict*, 49 U.S. (8 How.) 107 (1850) 4

STATUTES

11 U.S.C. § 365 18
11 U.S.C. § 502 19
11 U.S.C. § 541 20
11 U.S.C. § 547 18
28 U.S.C. § 157 ..... 17, 19, 20
28 U.S.C. § 1332 ..... 11, 22, 26
28 U.S.C. § 1334 ..... 17, 19
28 U.S.C. § 1334(a) 17, 18
28 U.S.C. § 1334(b) ..... *passim*
28 U.S.C. § 1334(c) 21, 29, 30
28 U.S.C. § 1334(d) 29
28 U.S.C. § 1334(e) 18, 20, 21
28 U.S.C. § 1367 26
28 U.S.C. § 1409(b) 21
28 U.S.C. § 1452(b) 21
28 U.S.C. § 1471(c) (repealed 1984) 17
Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 17
Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 17
Judiciary Act of Sept. 24, 1789, 1 Stat. 73 10

TABLE OF AUTHORITIES—Continued

Page(s)

LEGISLATIVE MATERIALS

H.R. Rep. No. 95-595, at 368, *reprinted in* 1978 U.S.C.C.A.N. at 6324 24
Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. 93-137 (1973) 24

OTHER AUTHORITIES

1 *Collier on Bankruptcy* ¶ 3.01[4][c] (15th ed. rev. 2005) 18, 19
1 *Collier on Bankruptcy* ¶ 3.01 (15th ed. 1980) 28
Federal Rules of Bankruptcy Procedure
Rule 7001 23
Rule 7003 23
Rule 9002 23
Rule 9014 23
Rule 9033 20

Amici curiae Ernest A. Young and Heather Elliott respectfully submit this brief supporting affirmance of the judgment below.[1]

INTEREST OF AMICI

Amici are law professors who teach and write on topics including federal jurisdiction and federalism and have a professional interest in the proper application and development of the law in these areas. Ernest A. Young is the Judge Benjamin Harrison Powell Professor in Law at the University of Texas School of Law and has written widely on federal jurisdiction, federalism, and constitutional and statutory interpretation. Heather Elliott is Assistant Professor of Law at the Columbus Law School at Catholic University of America, where her teaching and research focus on federal jurisdiction, federalism, and structural constitutional law.

INTRODUCTION AND SUMMARY OF ARGUMENT

"[F]ederal courts have no probate jurisdiction." *Harris* v. *Zion Sav. Bank & Trust Co.*, 317 U.S. 447, 450 (1943). This Court has made that point clear in an unbroken line of cases stretching back over a century and a half. As this Court has explained, because "the settlement and distribution of decedents' estates . . . are peculiarly matters of state law," federal jurisdiction over state-law disputes has consistently been construed to exclude matters whose adjudication would "interfer[e] with the operations of state tribunals invested with [probate] jurisdiction." *Id.* Such impermissible interference is present when a federal court is asked to probate a will, to administer a decedent's estate, or to entertain an action that challenges the validity of a decedent's estate plan or assails the judgment of a probate court, when state law reserves that proceeding exclusively to a probate court.

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than amici and their counsel made any monetary contribution toward the preparation or submission of this brief. The parties have granted blanket consent for the filing of amicus briefs.

Like the related limitation on federal jurisdiction over divorce, alimony, and custody matters—reaffirmed by this Court in *Ankenbrandt* v. *Richards*, 504 U.S. 689 (1992)—the probate limitation reflects the common-sense proposition that jurisdictional statutes must be read in light of "our dual system of government," *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 544 (1994). Respect for that dual system and the primacy of state law in probate matters compels the conclusion that—absent affirmative reason to believe that Congress intended otherwise—a general grant of federal jurisdiction must not be construed so fundamentally to upset the historic role of state courts in probate proceedings.

Nothing in the grant of bankruptcy jurisdiction signals such an intent. In order to encourage efficient administration of the bankruptcy estate, Congress extended bankruptcy jurisdiction beyond matters arising under the Bankruptcy Code or in a bankruptcy case to encompass proceedings—such as petitioner's claim against respondent—that arise solely under state law but are "related to" the bankruptcy case. There is, however, no indication in the text or legislative history of the statute that, in doing so, Congress intended to abrogate the long-settled exclusion of probate and domestic relations matters from federal jurisdiction.

Moreover, because both diversity jurisdiction and bankruptcy "related to" jurisdiction permit federal courts to hear a limited class of matters arising solely under state law, the federalism and comity concerns created by construing those statutory grants of jurisdiction to encompass probate matters are essentially identical. There is accordingly no reason to believe Congress would have intended the "related to" jurisdiction to encompass probate matters excluded from diversity jurisdiction. Indeed, it would be anomalous, even irrational, to conclude that Congress intended federal bankruptcy courts to be the only courts in the federal judiciary with jurisdiction to probate wills or grant divorces.

In *Harris*, this Court held that the bankruptcy laws must be construed in light of the established principle that probate matters are "peculiarly matters of state law." 317

U.S. at 450. That principle applies with equal force to the grant of "related to" jurisdiction in the present-day Bankruptcy Code. The Court of Appeals here correctly concluded that entertaining petitioner's state-law probate claim in bankruptcy court would be a sharp departure from a long-established limitation on federal jurisdiction and would offend the principles of federalism and comity that underlie that limitation.

ARGUMENT

I. FEDERAL COURTS LACK JURISDICTION TO ENTERTAIN ACTIONS THAT WOULD INTERFERE WITH STATE COURT PROBATE PROCEEDINGS

A. This Court Has Long Held That Federal Courts Have No Jurisdiction Over State-Law Probate Claims Whose Adjudication Would Interfere With State Court Probate Proceedings

1. For over one hundred fifty years, this Court has recognized that probate matters—like divorce, alimony, and child custody proceedings—are within the special province of the states and that federal courts therefore lack jurisdiction over actions that would interfere with state court probate proceedings. As this Court explained in a 1943 case construing the bankruptcy laws, "the settlement and distribution of decedents' estates and the right to succeed to the ownership of realty and personalty are peculiarly matters of state law." *Harris* v. *Zion Sav. Bank & Trust Co.*, 317 U.S. 447, 450 (1943). Accordingly, "federal courts have no probate jurisdiction and have sedulously refrained . . . from interfering with the operations of state tribunals invested with that jurisdiction." *Id.*

This Court's opinions make clear that adjudication of a probate-related claim by a federal court creates such impermissible interference, at a minimum, when adjudication of the claim requires the federal court (1) to decide whether a will should be admitted to probate, *see, e.g.*, *Tarver* v. *Tarver*, 34 U.S. (9 Pet.) 174 (1835); *Armstrong* v. *Lear*, 25 U.S. (12 Wheat.) 169 (1827); (2) to assume control over prop-

erty over which a state probate court is already exercising *in rem* jurisdiction, *see, e.g.*, *Williams* v. *Benedict*, 49 U.S. (8 How.) 107 (1850); or (3) to invalidate a will or other testamentary instrument or set aside the judgment of a probate court, when applicable state law permits the claimant to seek such relief only through probate proceedings, *see, e.g.*, *Sutton* v. *English*, 246 U.S. 199 (1918); *Farrell* v. *O'Brien*, 199 U.S. 89 (1905); *Case of Broderick's Will*, 88 U.S. (21 Wall.) 503 (1874); *Fouvergne* v. *New Orleans*, 59 U.S. (18 How.) 470 (1855).

Initial probate of wills. The principle that federal courts have no jurisdiction to probate wills was first established in 1827 in *Armstrong* v. *Lear*, 25 U.S. (12 Wheat.) 169, and has never been questioned by this Court. *Armstrong* affirmed the dismissal of a plaintiff's suit to establish the validity of a will under which he claimed title to the testator's assets, observing that jurisdiction over the probate of wills of personalty rested exclusively in the state probate courts. *See id.* at 176. A long line of cases has followed *Armstrong*'s teaching, from *Tarver* v. *Tarver*, 34 U.S. (9 Pet.) 174 (1835), to the most recent case to address the question, *Markham* v. *Allen*, 326 U.S. 490, 494 (1946) (observing that "a federal court has no jurisdiction to probate a will").

Administration of estates. This Court has also held from an early date that a federal court lacks jurisdiction to grant relief involving a decedent's estate when that estate is already being administered by a state probate court. In *Williams* v. *Benedict*, 49 U.S. (8 How.) 107 (1850), for example, the Court refused to permit a judgment creditor to execute against the assets of an insolvent decedent because the probate court was already exercising *in rem* jurisdiction over the assets, and the probate court alone could control the disposition of those assets. *See id.* at 112; *see also, e.g.*, *Byers* v. *McAuley*, 149 U.S. 608, 613 (1893) (addressing "the question [of] the power of the [federal] circuit court . . . to interfere with the administration of an estate in a state court" and concluding that the federal courts had no such power). *Markham* reaffirmed that principle as well, noting that a

federal court has no jurisdiction to "administer an estate." 326 U.S. at 494.

Other interference with probate proceedings. This Court has not, however, construed the probate limitation as applying only in cases where the federal court is called on actually to probate a will or administer a decedent's estate. Rather, it has recognized that federal courts also lack jurisdiction over actions that seek to invalidate a will or other testamentary instrument or set aside the judgment of a probate court, when under state law the plaintiff can obtain such relief only in the probate court.

This Court recognized that principle as early as 1850, in *Fouvergne*, holding that there was no federal jurisdiction over an action seeking to invalidate a will:

> The courts of the United States have no probate jurisdiction, and must receive the sentences of the courts to which the jurisdiction over testamentary matters is committed, as conclusive of the validity and contents of a will; an original bill cannot be sustained upon an allegation that the probate of a will is contrary to law. If any error was committed in allowing the probate, the remedy is in the state courts, according to their appropriate modes of proceeding ....

59 U.S. (18 How.) at 473.

That holding has been reiterated many times since. Thus, in *Broderick's Will*, this Court refused to set aside the probate of a will, explaining that when the question on which the parties' rights depends is "the establishment or non-establishment of the will," the matter is "entirely and exclusively within the jurisdiction of the Probate Court" of the state. 88 U.S. (21 Wall.) at 517. Similarly, in *Farrell* v. *O'Brien*, this Court held that federal courts had no jurisdiction to entertain a proceeding alleging that a will was invalid because, under the law of the state of Washington, such a proceeding was one "ancillary" to probate and could be brought only in the probate court. *See* 199 U.S. at 116. And, in *Sutton* v. *English*, the Court held that federal courts could

not hear a suit alleging that defendants had exercised undue influence to persuade the decedent to make a will in their favor; because the suit was, "in an essential feature, a suit to annul the will," and because under Texas law such suits were cognizable only in the probate court, it fell outside federal jurisdiction. 246 U.S. at 208.

A long line of cases thus establishes that, where state law requires such relief to be sought in probate court, an action seeking to adjudicate the validity of a decedent's estate plan or to attack the judgment of a probate court would impermissibly interfere with the operations of state probate and is therefore beyond federal jurisdiction.[2]

Respondent's brief explains that petitioner's claim here falls into that category. Although her claim is styled one for tortious interference with expectancy of a gift, it is in effect a challenge to the validity of J. Howard's estate plan as determined by the Texas probate court: at bottom, the question posed by petitioner's claim is whether J. Howard intended to give certain assets to her or instead—as the Texas probate court found—to dispose of those assets as provided

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[2] The analysis does not change when, as here, the decedent's primary testamentary instrument is a trust that is acting as a will substitute. As the courts of appeals have recognized, when used in this manner, the trust is no less integral to the decedent's estate than a will, and federal adjudication of the validity of the trust would interfere with state probate proceedings as profoundly as when the estate-planning instrument is a will. *See Golden* v. *Golden*, 382 F.3d 348, 359 (3d Cir. 2004) (in situations where a trust is a will substitute and directs the distribution of the decedent's estate upon his death, the probate limitation applies); *Storm* v. *Storm*, 328 F.3d 941, 944-945 (7th Cir. 2003) (same); *cf. Princess Lida of Thurn & Taxis* v. *Thompson*, 305 U.S. 456 (1939) (upholding the exclusive jurisdiction of state courts in resolving matters arising out of a trust when the property of the trust was under the jurisdiction of the state court). The United States' contention (Br. 17-18) that English courts of chancery in 1789 exercised jurisdiction over trusts is irrelevant, since, as discussed below, *see infra* Part I.B.2, the scope of chancery jurisdiction in 1789 is not determinative of the scope of the probate limitation, which turns on whether a federal suit would impermissibly interfere with the operations of the special state-court system for adjudicating probate matters.

in his will and living trust. The Court of Appeals concluded (Pet. App. 30) that petitioner's claim therefore necessarily implicates the validity of J. Howard's testamentary instruments. Both the Court of Appeals and the probate court itself also found (*id.* at 35-36) that under Texas law, such claims can be raised only in the probate court—where petitioner's claim was in fact raised, tried, and decided against her. Under these circumstances, petitioner's claim falls within the probate limitation on federal jurisdiction.

2. Petitioner contends that her suit is an action "*inter partes*," and that this Court has held that *inter partes* actions are not subject to the probate limitation. That argument misapprehends this Court's precedents regarding the probate limitation. Contrary to petitioner's assertion, "disputes between parties that arise out of wills" (Br. 16) are not necessarily within federal jurisdiction. Indeed, many of this Court's decisions invoking the probate limitation involve such disputes; *Sutton*, for example, was a dispute among parties arising out of a clause in a will that plaintiffs alleged was procured by undue influence. *See* 246 U.S. at 202-203.

To be sure, not all *inter partes* disputes related to probate, even suits that seek an adjudication of claims against a decedent's estate, are subject to the probate limitation. Federal courts "have jurisdiction to entertain suits [by] claimants against a decedent's estate . . . *so long as the federal court does not interfere with the probate proceedings.*" *Markham*, 326 U.S. at 494 (emphasis added). As discussed above, however, where an *inter partes* action would interfere with the operations of the state probate court by impinging on that court's exclusive jurisdiction over core matters of probate, federal jurisdiction is barred.

The precise nature of that distinction was made clear in *Sutton*, which summarized this Court's precedents on the probate limitation. *Sutton* explained that, "as the authority to make wills is derived from the states," both "matters of strict probate" and proceedings "incidental or ancillary to the probate," including actions "to set aside a will or the probate thereof," are outside federal jurisdiction. 246 U.S.

at 205. On the other hand, "questions relating to the interests of heirs, devisees, or legatees, . . . which may be determined without interfering with probate or assuming general administration" of an estate may be heard in federal court. *Id.* Moreover, because the concern over interfering with state probate proceedings is not present when a state permits a plaintiff to bring a "suit *inter partes* . . . to annul a will or to set aside the probate" in its courts of general jurisdiction, such a suit is cognizable in federal court. *Id.*

Applying these principles, *Sutton* held that because an *inter partes* action challenging the validity of a portion of a decedent's estate plan on the grounds of undue influence was within the exclusive jurisdiction of the Texas probate courts, it could not be heard in federal court. *See* 246 U.S. at 207-208; *see also Farrell*, 199 U.S. at 110-111 (*inter partes* disputes that may be heard in federal court do not include actions "ancillary" to probate).[3] As respondent explains, petitioner's suit here is the type of *inter partes* action *Sutton* and its progenitors held barred by the probate limitation.[4]

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[3] Contrary to petitioner and her amici, this analysis does not offend the principle that the states cannot dictate the scope of federal jurisdiction. Pet. Br. 42-49; U.S. Br. 12-16. To be sure, a state could not remove a state-law cause of action unrelated to probate from federal diversity jurisdiction simply by placing it within the exclusive jurisdiction of the probate courts. But, in order to determine whether a particular probate-related cause of action is "ancillary" to probate—so that permitting it to proceed in federal court would unduly interfere with state-court probate jurisdiction—*Sutton* and *Farrell* appropriately look to whether the cause of action is within the exclusive jurisdiction of the state probate courts under state law.

[4] Nothing in *Markham* v. *Allen*, the Supreme Court's most recent affirmation of the probate limitation on federal court jurisdiction, is inconsistent with this analysis. *Markham* was a suit brought under the federal Trading with the Enemy Act, which entitled the United States, through an Alien Property Custodian, to seize property of enemy aliens in the United States; the Custodian sought a declaration that, under the Act, he was entitled to seize property bequeathed to German legatees. *See* 326 U.S. at 492. Plaintiff did not challenge, and the case did not involve, the validity of the will, the bequests, or the decedent's testamentary intent. Indeed, in *Markham*, the plaintiff's claim arose under *federal* law that

B. The Probate Limitation Appropriately Construes The Grant Of Jurisdiction To Federal Courts Over State-Law Matters In Light Of Basic Principles Of Federalism And Comity

Like the cognate limitation on federal jurisdiction over domestic relations matters, *see Ankenbrandt* v. *Richards*, 504 U.S. 689 (1992), the probate limitation stems from the recognition that matters of probate are within the special authority and competence of the states, and that Congress's limited grant of power to federal courts to resolve state-law matters should be construed to respect that historical allocation of authority. As *Ankenbrandt* recognized, determining the scope of federal jurisdiction in light of such traditional principles of comity is both sound as a matter of policy and unexceptionable as a matter of statutory interpretation.

1. In *Ankenbrandt*, this Court addressed and reaffirmed the long-standing restriction on federal jurisdiction over divorce, alimony, and child custody matters. From an early date, this Court has recognized that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *In re Burrus*, 136 U.S. 586, 593-594 (1890); *see also Barber* v. *Barber*, 62 U.S. (21 How.) 582, 584 (1859) ("We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony . . . .").

As *Ankenbrandt* explained, this principle is best understood as a limiting construction of the statutory grant of jurisdiction to federal courts to entertain state-law matters. *See* 504 U.S. at 698-703. In *Ankenbrandt*, the statute at issue was the diversity statute, which originally granted federal courts concurrent jurisdiction with the state courts of

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preempted contrary state law regarding property entitlements. As such, there was no argument that the claim was within the exclusive jurisdiction of a state probate court. Accordingly, the suit in *Markham* could not be said to be outside federal jurisdiction on the ground that it "interfered" with state probate proceedings. *See id.* at 495.

"all suits of a civil nature at common law or in equity" where the diversity and amount-in-controversy requirements were met. *Id.* at 698 (quoting Judiciary Act of Sept. 24, 1789, § 11, 1 Stat. 73, 78). The early domestic relations cases suggest that suits for divorce, alimony, and child custody were not "suits of a civil nature at common law or in equity" within federal jurisdiction, both because the jurisdiction of English courts of chancery over such matters was limited, *see id.* at 699-700, and, more importantly in our federal system, because such matters were traditionally regulated exclusively by the states, which had created specialized procedures for adjudicating them, *see Burrus*, 136 U.S. at 593-594. Indeed, this Court recently explained that the domestic relations limitation recognized in *Ankenbrandt* stems from the "strong . . . deference to state law in this area." *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 12 (2004).[5]

Ankenbrandt concluded that, regardless of the precise historical origins of the domestic relations limitation, it was a well-established construction of Congress's grant of jurisdiction to federal courts over state-law matters. *See* 504 U.S. at

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[5] In *Ankenbrandt*, the majority did not decide the precise historical origin of the domestic relations limitation, although it discussed suggestions in the early domestic relations cases that such matters were outside the scope of English chancery jurisdiction (being handled by ecclesiastical courts). *See* 504 U.S. at 699. Justice Blackmun, concurring in the judgment, expressed the view that "[t]hese cases are premised not upon a concern for the historical limitation of equity jurisdiction of the English courts, but upon the virtually exclusive primacy at that time of the States in the regulation of domestic relations." *Id.* at 714. The two explanations are by no means inconsistent. Ecclesiastical courts, of course, have never been a feature of the American court system; state courts of specialized jurisdiction supplied the remedies that could not be furnished in federal courts of law or equity. Thus, while the original limitations on federal power and jurisdiction over domestic relations matters may have stemmed in part from perceived limitations on the jurisdiction of the English courts of chancery, this Court has recently explained that the continued vitality of those limitations rests on the primacy of the specialized state system that evolved to adjudicate such matters and the reluctance to interfere with the operations of that system. *See Newdow*, 542 U.S. at 12-13.

700-701. Consequently, when in 1948, after the merger of law and equity, Congress amended the diversity statute to encompass "all civil actions" that met the diversity and amount-in-controversy requirements—but took no action to eliminate the domestic relations limitation—it could be deemed to be aware of and to have acquiesced in the time-honored understanding that such civil suits did not include divorce, alimony, or child custody matters. *Id.* (quoting 28 U.S.C. § 1332).[6]

2. The analysis in *Ankenbrandt* applies equally to the probate limitation. Like the domestic relations limitation, the probate limitation is best understood as a limiting construction of the statutory grant of authority to federal courts over civil actions arising under state law in light of the traditional primacy of the states in matters of probate.

As *Harris* observed, "the settlement and distribution of decedents' estates and the right to succeed to the ownership of realty and personalty are peculiarly matters of state law." 317 U.S. at 450; *see also, e.g., Sutton*, 246 U.S. at 205 ("[T]he authority to make wills is derived from the states, and the requirement of probate is but a regulation to make a will effective . . . ."); *Ellis* v. *Davis*, 109 U.S. 485, 497 (1883) ("[O]riginal probate . . . is [a] mere matter of state regulation, and depends entirely upon the local law . . . ."). The construction of the grant of federal jurisdiction over state-law actions to exclude probate matters gives effect to this traditional understanding of the balance of federal-state

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[6] *Ankenbrandt* went on to hold that the precise suit at issue in that case—a tort suit by a woman seeking damages from her ex-husband for alleged physical and sexual abuse of their children—was not barred by the domestic relations limitation. *See* 504 U.S. at 704. That outcome is unsurprising, since the suit did not seek a decree of divorce, alimony, or custody; did not seek to overturn, modify, or enforce such a decree; did not seek to attack a judgment of the family court of the state; and did not seek relief that under state law could be obtained only from the family court. Accordingly, and unlike petitioner's suit here, the action in *Ankenbrandt* in no way interfered with the operations of the special state tribunals designed to handle divorce, alimony, and custody matters.

power and prevents "interfer[ence] with the operations of state tribunals invested with [probate] jurisdiction." *Harris*, 317 U.S. at 450; *see also Markham*, 326 U.S. at 494.

Like the domestic relations cases, some of the cases addressing the probate limitation invoke English practice—specifically, the exclusive ecclesiastical jurisdiction over certain probate matters—to support their construction of "suits of a civil nature at common law or in equity" as excluding probate and disputes inextricably connected to probate. *See, e.g., Markham*, 326 U.S. at 494. As with the domestic relations cases, however, the historical limitations on ecclesiastical jurisdiction cannot entirely explain the origins or the scope of the probate limitation. *See, e.g., Dragan* v. *Miller*, 679 F.2d 712, 713 (7th Cir. 1982) (Posner, J.) (discussing the "dubious . . . historical pedigree" of the explanation premised on English ecclesiastical jurisdiction). To take one example, ecclesiastical courts apparently did not have exclusive jurisdiction over wills devising real estate, *see id.*; but the probate limitation on federal jurisdiction in this country has always encompassed wills of realty as well as wills of personalty.[7] As with the domestic relations limitation, the continued vitality of the probate limitation stems in large part from respect for, and desire to avoid interference with, the states' and the specialized state probate courts' primary authority over probate matters. *See Harris*, 317 U.S. at 450.

In any event, as *Ankenbrandt* made clear, regardless of the original justification for the probate exception, its long acceptance by this Court and the lower federal courts strongly counsels in favor of its continued recognition today. *See* 504 U.S. at 700-701. For over one hundred fifty years, federal jurisdiction has been construed to exclude probate matters. The probate limitation is thus a long-standing and

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[7] *See, e.g., Ellis*, 109 U.S. at 495 (explaining that allocation of probate jurisdiction in this country differed from that in England in that "probate jurisdiction was extended . . . over wills of land"); *Sutton*, 246 U.S. 199 (applying probate limitation to dispute arising out of will disposing of real estate); *Broderick's Will*, 88 U.S. (21 Wall.) 503 (same).

robust feature of the legal landscape against which Congress acted, not only when it reenacted the diversity statute in 1948, but also when it enacted the current statutory grant of bankruptcy jurisdiction in 1978, *see infra* Part II. Because there is no indication in either statute that Congress intended to depart from that settled understanding regarding the scope of federal court power to resolve state-law disputes, it must be deemed to have acquiesced in it.

3. The long-standing recognition of a limitation on federal jurisdiction over probate matters is consistent with established principles of statutory interpretation and reflects proper deference to principles of federalism.

This Court has consistently recognized that the existence of an established, comprehensive state regulatory scheme—such as state regulation of probate—counsels against interpreting a grant of federal power to permit interference with that scheme. *See Gonzales* v. *Oregon*, 2006 WL 89200, at *18 (U.S. Jan. 17, 2006) (refusing to construe the Controlled Substances Act in a way that would "effectively displace[] the States' general regulation of medical practice"). Indeed, it is a firmly settled principle of statutory interpretation that federal statutes should be construed to respect the states' place as "independent sovereigns in our federal system," and not to trammel on traditional state prerogatives unless it is clear that Congress so intended. *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996). "Federal statutes impinging upon important state interests 'cannot ... be construed without regard to the implications of our dual system of government,'" and "where the intent to override [state law] is doubtful, our federal system demands deference to long-established traditions of state regulation." *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 544, 546 (1994) (holding that meaning of term "reasonably equivalent value" in Bankruptcy Code depends on state law) (citation omitted). "[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state bal-

ance" by making law in an area historically reserved to the States. *United States* v. *Bass*, 404 U.S. 336, 349 (1971).[8]

These same principles inform the interpretation of jurisdictional statutes, which—like other federal statutes—must be read against the backdrop of "'our dual system of government,'" *BFP*, 511 U.S. at 544 (citation omitted). As this Court has observed: "'If the history of the interpretation of judiciary legislation teaches us anything, it teaches the duty to reject treating such statutes as a wooden set of self-sufficient words . . . .'" *Merrell Dow Pharms. Inc.* v. *Thompson*, 478 U.S. 804, 810 (1986) (citation omitted). Rather, "in exploring the outer reaches" of statutes conferring federal jurisdiction, "sensitive judgments" must be made "about congressional intent, judicial power, and the federal system." *Id.* In *Merrell Dow*, the Court accordingly construed the federal-question statute narrowly to exclude suits that turn on the interpretation of a federal statute where the cause of action is one "traditionally relegated to state law," *id.* at 811, and there is no private right of action to enforce the federal statute—a class of cases that the federal courts have little interest in adjudicating. *See id.* at 811-812; *see also Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 21-22 & n.22 (1983) (relying in part on "considerations of comity" to find no federal-question jurisdiction over a suit by a state for a declaration of the validity of state law, and explaining that such a suit "is suffi-

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[8] *See also, e.g., Solid Waste Agency of N. Cook County* v. *United States Army Corps of Eng'rs*, 531 U.S. 159, 173 (2001) (refusing to adopt construction of federal statute that would "alter[] the federal-state framework by permitting federal encroachment upon a traditional state power"); *Pegram* v. *Herdrich*, 530 U.S. 211, 237 (2000) (in a field that is "a subject of traditional state regulation, there is no . . . preemption without clear manifestation of congressional purpose"); *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (where "Congress [has] legislated . . . in [a] field which the States have traditionally occupied . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress" (citations omitted)).

ciently removed from the spirit of necessity and careful limitation of district court jurisdiction . . . to convince us that, until Congress informs us otherwise, such a suit is not within" federal jurisdiction); *Shamrock Oil & Gas Corp.* v. *Sheets*, 313 U.S. 100, 108-109 (1941) (construing removal statute narrowly because of comity concerns). Thus, comity concerns properly inform even the interpretation of the scope of federal-question jurisdiction; they necessarily have yet more force in the interpretation of the grants of jurisdiction to federal courts over purely state-law matters. Given the long-standing reservation to the states of power over the regulation of probate, the grant of jurisdiction to federal courts should not be construed to permit interference with that traditional state authority, absent some clear indication Congress intended that result.

"[T]he dictates of sound judicial policy," *Merrell Dow*, 478 U.S. at 810, also support the conclusion that Congress did not intend to grant federal courts jurisdiction over actions that would interfere with state probate proceedings. *Cf. Ankenbrandt*, 504 U.S. at 703-704 (considering the policy reasons for the domestic relations limitation). As this Court has recognized, the nature of probate—a proceeding that must often adjudicate multiple parties' conflicting claims to a single *res*—requires that there be one efficient, final, and authoritative action to determine title to the property of a decedent. *See Broderick's Will*, 88 U.S. (21 Wall.) at 509 (transferring property from a decedent to an heir or legatee requires a "convenient jurisdiction and mode of proceeding by which this devolution may be effected with least chance of injustice and fraud; and that the result obtained should be firm and perpetual"). Both legal certainty and efficiency are undermined if an issue can be litigated in both the state probate court and the federal court. *See Dragan*, 679 F.2d at 714 (the resolution of the validity of the testamentary instrument is "less certain, less predictable, than if it can be litigated in one or the other forum only, even if the same substantive law is applied").

Because probate proceedings must be commenced in the state probate court, judicial economy and judicial specialization also support keeping matters related to these proceedings in the state probate courts. *See Dragan*, 679 F.2d at 714. The state probate courts are experts in probate law, particularly where a state has established separate probate courts with exclusive jurisdiction over probate-related matters; conversely, federal courts will have only limited experience in adjudicating issues that are uniquely tied to the probate of wills, such as undue influence or testamentary capacity. *See id.* at 715. These considerations further support interpreting the federal statutory grant of jurisdiction to respect the traditional allocation of power over such matters, absent some evidence Congress intended otherwise.

II. THE PROBATE LIMITATION APPLIES EQUALLY TO DISTRICT AND BANKRUPTCY COURTS EXERCISING "RELATED TO" BANKRUPTCY JURISDICTION

Petitioner and her amici contend that any probate limitation on diversity jurisdiction cannot apply in bankruptcy because bankruptcy is a creature of federal law. That formulation fails to recognize that the question here is the authority of a court sitting in bankruptcy to entertain disputes, like this one, that arise solely under state law. As demonstrated in Part I, the limitations on federal jurisdiction over state-law probate matters were well-established by 1978, when the current bankruptcy jurisdiction statute was enacted, and nothing in either the text or the legislative history of the bankruptcy jurisdiction statute demonstrates any intent by Congress to depart from that accepted understanding. Nor is there any textual, historical, or policy ground to treat bankruptcy jurisdiction over state-law probate matters any differently from diversity jurisdiction over such matters.[9]

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[9] Amici contend (Aaron Br. 25-26) that respondent waived his right to challenge the bankruptcy court's subject-matter jurisdiction over petitioner's claim against him because he filed a proof of claim in her bank-

A. The Statutory Grant Of Jurisdiction

The current grant of jurisdiction to the federal district courts over bankruptcy matters was adopted in substantially its present form in the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, and is now codified at 28 U.S.C. § 1334.[10] Section 1334(a) grants the district courts "original and exclusive jurisdiction of all cases under title

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ruptcy case and she then counterclaimed against him. But one of the most basic legal principles is that subject-matter jurisdiction is not waivable. As this Court has stated, "It needs no citation of authorities to show that the mere consent of parties cannot confer upon a court of the United States the jurisdiction to hear and decide a case." *People's Bank* v. *Calhoun*, 102 U.S. 256, 260-261 (1880); *accord, e.g., American Fire & Cas. Co.* v. *Finn*, 341 U.S. 6, 18 n.17 (1951). Amici's authorities are not to the contrary. *Langenkamp* v. *Culp* held that a proof of claim could in certain circumstances constitute a waiver of the claimant's right to a jury trial on a counterclaim. *See* 498 U.S. 42, 44-45 (1990). Similarly, *Arecibo Cmty. Health Care, Inc.* v. *Commonwealth of Puerto Rico* held that section 106 of the Bankruptcy Code, 11 U.S.C. § 106(b), constitutionally provided that the filing of a proof of claim by a governmental unit waived any claim to sovereign immunity from compulsory counterclaims asserted by the debtor. *See* 270 F.3d 17, 20 (1st Cir. 2001). Both the right to a jury trial and sovereign immunity are waivable; a challenge to subject-matter jurisdiction is not. Nor does *Commodity Futures Trading Comm'n* v. *Schor* help amici's argument; to the contrary, that case reaffirmed the proposition that "the parties by consent cannot confer on federal courts subject-matter jurisdiction" they do not possess. 478 U.S. 833, 851 (1986).

[10] The 1978 Act provided that bankruptcy courts could exercise all of the jurisdiction granted to the district courts. *See* 28 U.S.C. § 1471(c) (repealed 1984). In *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982), this Court held that such a sweeping grant of judicial power to the non-Article III bankruptcy courts violated the Constitution, at least insofar as it permitted bankruptcy courts to adjudicate state common-law contract and tort actions. In response to *Marathon*, the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, amended the provisions of the 1978 Act that concerned the allocation of authority between the district courts and the bankruptcy courts to ensure that, absent parties' consent, bankruptcy courts would not enter final judgments in matters constitutionally required to be adjudicated by an Article III tribunal. *See* 28 U.S.C. § 157. The 1984 amendments did not, however, purport to alter the basic scope of the 1978 jurisdictional grant to the district courts.

11." 28 U.S.C. § 1334(a). In addition, section 1334(e) grants the district court in which a bankruptcy case is pending exclusive *in rem* jurisdiction over "all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate." *Id.* § 1334(e)(1). Finally, section 1334(b) grants the district courts "original *but not exclusive* jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." *Id.* § 1334(b) (emphasis added).

Thus, section 1334(a) provides that bankruptcy cases may be brought only in the federal district courts, *see, e.g.*, *In re Wood*, 825 F.2d 90, 92 (5th Cir. 1987) (section 1334(a) "refers merely to the bankruptcy petition itself"), and section 1334(e) grants the particular district court in which the bankruptcy case is filed exclusive *in rem* jurisdiction over property of the estate.

Because a bankruptcy "case" is merely an umbrella under which the various "proceedings" that comprise the case are assembled, however, the most significant jurisdictional provision is section 1334(b), which grants the district courts non-exclusive jurisdiction over all of the "proceedings" that comprise the bankruptcy case. Section 1334(b) identifies three distinct types of "proceedings" over which the district courts possess non-exclusive jurisdiction: (1) proceedings "arising under title 11"; (2) proceedings "arising in . . . cases under title 11"; and (3) proceedings "related to cases under title 11."

Proceedings "arising under title 11" are those in which the cause of action is created by the Bankruptcy Code, such as, for example, a complaint to avoid a preferential transfer, *see* 11 U.S.C. § 547, or a motion to reject an executory contract, *see id.* § 365. *See Wood*, 825 F.2d at 96 ("Congress used the phrase 'arising under title 11' to describe those proceedings that involve a cause of action created or determined by a statutory provision of title 11."); 1 *Collier on Bankruptcy* ¶ 3.01[4][c][i] (15th ed. rev. 2005). Proceedings "arising in . . . cases under title 11," by contrast, are matters that do not originate in an express right or cause of action

under the Bankruptcy Code, but nevertheless can arise only in a bankruptcy case, such as, for example, a proceeding to determine the validity of a claim against the estate, *see* 11 U.S.C. § 502. *See Wood*, 825 F.2d at 97 ("'[A]rising in' proceedings are those that are not based on any right expressly created by title 11, but . . . would have no existence outside of the bankruptcy."); 1 *Collier on Bankruptcy* ¶ 3.01[4][c][iv].

Both proceedings "arising under title 11" and proceedings "arising in . . . cases under title 11" arise under federal law because they owe their existence to the federal bankruptcy scheme. But the last category of proceedings under section 1334(b)—proceedings that are merely "related to cases under title 11"—is quite different. Under the ambit of the "related to" provision, federal courts may hear a variety of disputes that exist independently of the bankruptcy case, that arise solely under state law, and that, absent a bankruptcy, could be heard only in state court—as long as the resolution of the dispute could affect the bankruptcy estate. *See, e.g., Celotex Corp.* v. *Edwards*, 514 U.S. 300, 307-308 (1995); *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 54 (1982) (plurality) (the "related to" provision "empowers bankruptcy courts to entertain a wide variety of cases involving claims that may affect the property of the estate," including "claims based on state law"); *Pacor, Inc.* v. *Higgins*, 743 F.2d 984, 994-995 (3d Cir. 1984).[11]

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[11] As amended by the 1984 Bankruptcy Amendments and Federal Judgeship Act, section 1334 grants jurisdiction over bankruptcy cases and proceedings in the first instance only to the district courts. Section 157, however, permits the district courts to refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 . . . to the bankruptcy judges for the district." 28 U.S.C. § 157(a). In accordance with *Marathon*'s dictates, bankruptcy judges to whom such matters are referred "may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11." *Id.* § 157(b)(1). "Core proceedings" include a variety of enumerated matters, *id.* § 157(b)(2), but must arise either under the Bankruptcy Code or in a bankruptcy case, *see Wood*, 825 F.2d at 97 ("[A] proceeding is core under section 157 if it invokes a substantive right

B. This Case Turns On The Scope Of Section 1334(b)'s Grant Of "Related To" Jurisdiction

Of the various jurisdictional provisions of section 1334, only one is relevant to this case: section 1334(b)'s grant of non-exclusive jurisdiction over "all civil proceedings . . . related to cases under title 11." Petitioner's claim to J. Howard's assets plainly does not arise under title 11; her cause of action arises under Texas law, not the Bankruptcy Code. Nor does her claim arise in a case under title 11; it could—and did—exist independently of her bankruptcy case. Rather, a claim like petitioner's—a state-law claim by the debtor against a third party—is at best a claim "related to" the bankruptcy case. *See Celotex*, 514 U.S. at 307 n.5 ("Proceedings 'related to' the bankruptcy include . . . causes of action owned by the debtor which become property of the estate . . . ."); *Marathon*, 458 U.S. at 72 n.26.

Petitioner and her amici go seriously astray in contending that section 1334(e) gives the district court exclusive jurisdiction over petitioner's claim. Pet. Br. 30, 33-34; Aaron Br. 7-8, 17-20. Section 1334(e) does not confer jurisdiction to hear and decide *in personam* actions; it merely grants the district court *in rem* jurisdiction over the property of the bankruptcy estate. Although petitioner's state-law cause of action is property of the estate, *see* 11 U.S.C. § 541, it does not follow that section 1334(e) confers exclusive jurisdiction to *adjudicate* that cause of action.

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provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case."). Those categories of proceedings correspond to the matters of "public right" that are "at the core of the federal bankruptcy power" and thus, under *Marathon*, may constitutionally be adjudicated by a non-Article III tribunal. 458 U.S. at 71 (plurality). By contrast, "non-core" proceedings, which include state-law matters that are merely "related to" the bankruptcy case, may not constitutionally be remitted to a non-Article III tribunal for resolution, *see id.*; such matters may be heard by the bankruptcy court but not determined by that court absent the consent of all the parties, *see* 28 U.S.C. § 157(c). As to such non-core matters, the bankruptcy court acts as a magistrate, making proposed findings and conclusions that are then reviewed *de novo* by the district court. *See id.*; Fed. R. Bankr. P. 9033.

Petitioner and her amici's contrary reading creates numerous inconsistencies and absurdities. *First*, petitioner's reading of section 1334(e) would make that provision conflict with section 1334(b), which provides that district courts have concurrent, not exclusive, jurisdiction over state-law claims by the debtor "related to" the bankruptcy.[12] *Second*, because the jurisdiction granted by section 1334(e) is *exclusive*, petitioner's reading of the statute would mean that trustees and debtors-in-possession would be unable to pursue claims belonging to the estate in state court, or in any court other than the district court where the bankruptcy is pending. Such claims, however, are routinely brought in other courts—indeed, that is expressly contemplated by the bankruptcy venue provisions. *See, e.g.*, 28 U.S.C. § 1409(b) (requiring trustee to bring certain actions against third parties "only in the district court for the district in which the defendant resides"). *Third*, petitioner's reading of section 1334(e) cannot be reconciled with the abstention and remand provisions, which provide that district courts may, in certain circumstances, abstain from adjudicating state-law "related to" actions, *see id.* § 1334(c), and may remand such actions to state court if removed from state court, *see id.* § 1452(b). If the district court's jurisdiction over such claims were exclusive, there would be no room for abstention or remand.[13]

In short, section 1334(e) is irrelevant to this case; if the district court did have jurisdiction to adjudicate petitioner's

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[12] Amici's contention (Aaron Br. 7-8) that the district court had jurisdiction over petitioner's claim under *both* section 1334(e) and 1334(b) is nonsensical; a court cannot simultaneously have exclusive and non-exclusive jurisdiction over a claim.

[13] Amici argue (Aaron Br. 16) that a court sitting in bankruptcy can abstain under section 1334(c) from exercising its exclusive jurisdiction under section 1334(e). Again, this contention makes no sense: if the district court in which the bankruptcy is pending has exclusive jurisdiction of a matter, no state court could have jurisdiction of that matter, and thus there could never be any state-court proceeding in favor of which the district court could abstain. The notion of abstention from the exercise of exclusive jurisdiction is meaningless.

claim, it could only be pursuant to the grant of "related to" jurisdiction under section 1334(b).

C. Nothing In The Language Or Legislative History Of Section 1334(b)'s Grant Of "Related To" Jurisdiction Suggests That Congress Intended To Abrogate The Well-Established Limitation On Federal Jurisdiction Over State-Law Probate Matters

Petitioner and her amici wrongly contend that, because section 1334 does not expressly refer to the long-established and often reiterated limitation on federal courts' jurisdiction over state-law probate matters, it must be construed as having abrogated that limitation. As this Court explained in *Ankenbrandt*, that reasoning is backward. Federal jurisdiction over causes of action arising entirely under state law is, by its very nature, limited. And because federal jurisdiction over state-law matters has, since the early nineteenth century, been construed to exclude claims that would interfere with state-court probate proceedings, section 1334's grant of jurisdiction over state-law claims related to the bankruptcy should be interpreted consistently with that principle, absent some indication of an intent to depart from it. *Cf. Ankenbrandt*, 504 U.S. at 699-703; *see supra* Part I.B.

Section 1334(b) contains no such indication. Indeed, the relevant language of section 1334(b), granting jurisdiction over "all civil proceedings" related to the bankruptcy case, is substantially similar to the language of the diversity statute, which prior to 1948 conferred jurisdiction over "all suits of a civil nature at common law or in equity," and after 1948 over "all civil actions," that met the diversity and amount in controversy requirements. *See* 28 U.S.C. § 1332(a); *Ankenbrandt*, 504 U.S. at 700. Just as the term "civil actions" in the diversity statute, while granting jurisdiction over a broad range of state-law matters that meet the statutory requirements, excludes certain domestic relations and probate matters traditionally considered to be the exclusive

prerogative of the state courts, so too does the term "civil proceedings" in section 1334(b).[14]

Moreover, prior to 1978, this Court recognized that it is appropriate to construe the scope of the powers conferred by the bankruptcy statute in light of the established limitation on federal court jurisdiction over state-law probate matters. *See Harris*, 317 U.S. 447. The question in *Harris* was whether the administrator of the estate of a deceased debtor could petition to revive bankruptcy proceedings that had been abated by the debtor's death, as the 1898 Bankruptcy Act provided, when the state court administering the decedent's estate refused to permit the petition. *See id.* at 449-450. This Court held that the administrator was bound by the state court's decision, explaining:

> When we reflect that the settlement and distribution of decedents' estates and the right to succeed to the ownership of realty and personalty are peculiarly matters of state law; that the federal courts have no probate jurisdiction and have sedulously refrained, even in diversity cases, from interfering with the operations of state tribunals invested with that jurisdiction, we naturally incline to a construction of [the Bankruptcy Act] consistent with these principles.

Id. at 450. There is no reason to believe that, in the 1978 Act, Congress intended silently to abrogate the principles that the *Harris* Court regarded as so firmly established.

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[14] Section 1334(b) uses the term "proceedings," rather than "actions," because many proceedings in a bankruptcy case are not full-fledged civil actions initiated by a complaint, but rather contested matters initiated by motion. *Compare* Fed. R. Bankr. P. 7001, 7003 (requiring certain matters to be litigated as adversary proceedings initiated by complaint) *with* Fed. R. Bankr. P. 9014 (governing contested matters); *see also* Fed. R. Bankr. P. 9002(1) (defining "civil action" in federal rules of civil procedure made applicable to bankruptcy cases as "an adversary proceeding or . . . contested matter"). That *procedural* distinction between "actions" and "proceedings," however, has no bearing on the *substantive* limitation on federal jurisdiction over probate matters.

See, e.g., *Midlantic Nat'l Bank* v. *New Jersey Dep't of Envt'l Prot.*, 474 U.S. 494, 501 (1986) (in interpreting the Bankruptcy Code, applying the principle that "if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific").

There is also no evidence in the legislative history of the 1978 Act that Congress intended to grant courts sitting in bankruptcy the authority to adjudicate probate matters merely because they might have an effect on the bankruptcy estate. Indeed, the legislative history is to the contrary. Prior to adoption of the 1978 Act, the Commission on the Bankruptcy Laws of the United States considered the question whether Congress should provide for administration of insolvent decedents' estates by the bankruptcy courts. Recognizing that the 1898 Act had been consistently interpreted not to permit such interference with state court probate, and in light of "the tradition of federal deference to state control of administration of decedents' estates," the Commission recommended against altering this established feature of the bankruptcy laws, and Congress did not do so. Report of the Commission on the Bankruptcy Laws of the United States, H.R Doc. 93-137, at 184-185 (1973).[15]

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[15] Petitioner relies heavily on statements in the legislative history that a debtor's death does not automatically abate a bankruptcy case, contending that this means that Congress intended to confer broad-ranging jurisdiction over probate matters. Pet. Br. 35-36. But this special provision for winding up the bankruptcy estates of debtors who die after commencement of the bankruptcy case is wholly consistent with the probate limitation. As the legislative history cited by petitioner itself explains, "[O]nce the [bankruptcy] estate is created, no interests in property of the estate remain in the debtor." H.R. Rep. No. 95-595, at 368, *reprinted* in 1978 U.S.C.C.A.N. at 6324 (quoted at Pet. Br. 35). A bankruptcy is thus unaffected by the debtor's death for a very simple reason: the bankruptcy estate's assets no longer belong to the debtor and thus cannot become a part of any probate proceeding. Accordingly, the continuation of the bankruptcy cannot interfere with the state-court probate proceedings, and the probate limitation is not implicated. It does not follow, however, that a debtor's death gives the bankruptcy court jurisdiction to probate the deceased debtor's will and adjudicate claims to the debtor's exempt

In short, petitioner and her amici cannot point to any specific indicia of congressional intent to grant jurisdiction over probate matters that would defeat the presumption that Congress intended to respect that long-standing limitation. Rather, they are forced to fall back on general statements in the legislative history to the effect that the 1978 Act was intended to expand bankruptcy court jurisdiction. Pet. Br. 31-33; Aaron Br. 11. While that is true, it is irrelevant to the question here. The 1978 Act was intended to reform the 1898 Act's antiquated "referee" system, under which bankruptcy courts' jurisdiction was restricted to "summary" proceedings regarding property under the control of the court, and absent consent did not extend to "plenary" proceedings, such as actions to recover estate property in the hands of a third party. *See Marathon*, 458 U.S. at 53 (plurality). The 1978 Act eliminated that distinction and permitted district and bankruptcy courts to adjudicate *in personam* actions related to the bankruptcy case. *See id.* at 54. But that says nothing about whether the "related to" jurisdiction encompasses probate matters that, prior to 1978, were never thought to come within the jurisdiction of the federal courts. As demonstrated above, there is no textual or historical evidence that Congress intended to alter that settled limitation on federal jurisdiction.

D. The Justifications For The Probate Limitation In Diversity Actions Are Equally Powerful In "Related To" Actions Heard In Bankruptcy Court

Petitioner and her amici contend that the probate limitation is relevant only to diversity cases, and that because bankruptcy is a matter arising under federal law, the probate limitation is inapplicable. Indeed, petitioner frames one of her questions presented as whether "Congress intend[ed] the probate exception to apply to cases arising under the Constitution, laws, or treaties of the United States[,] . . . in-

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property—still less that the bankruptcy court may adjudicate claims by debtors contesting the estate plan of a non-debtor decedent.

cluding the Bankruptcy Code." Pet. Br. i. Petitioner fails to recognize that, as demonstrated above, what is at issue here is not the scope of the federal courts' authority to adjudicate claims arising under the Bankruptcy Code, but rather the scope of their authority to adjudicate state-law claims that are "related to" the bankruptcy case. Because both the diversity statute and "related to" jurisdiction permit federal courts to adjudicate a limited set of matters that arise solely under state law, construing the two statutes to encompass probate matters raises essentially identical concerns, and the two statutes must be interpreted consistently.

Like diversity jurisdiction, *see* 28 U.S.C. § 1332, and like supplemental jurisdiction over state-law claims in federal question cases, *see id.* § 1367, "related to" jurisdiction permits a federal court to adjudicate state-law claims in certain specific circumstances where policy considerations trump concerns over comity and deference to state courts' expertise in state law. In diversity cases, the relevant policy concern is the fear that out-of-state litigants will face discrimination in their opponents' home-state courts. *See, e.g., Barrow S.S. Co.* v. *Kane*, 170 U.S. 100, 111 (1898) ("The object [of the diversity statute] was to secure a tribunal presumed to be more impartial than a court of the state in which one of the litigants resides."); *Bank of the United States* v. *Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809). In the case of supplemental jurisdiction, the primary relevant concern is judicial economy: once the parties are in federal court to adjudicate their federal claims, efficiency may warrant adjudicating state-law claims arising out of the same facts as well. *See United Mine Workers of Am.* v. *Gibbs*, 383 U.S. 715, 726 (1966) (noting that the justification for pendent jurisdiction "lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims").

"Related to" jurisdiction is similar in that concerns for efficiency and ease of administration of the bankruptcy estate may warrant adjudication of pure state-law claims that could affect the estate by the court with jurisdiction over the

bankruptcy case, despite the state courts' greater expertise in, and arguably greater interest in adjudicating, such matters. *See, e.g., Celotex*, 514 U.S. at 308 ("related to" jurisdiction was intended to permit the bankruptcy courts to "'deal efficiently and expeditiously with all matters connected with the bankruptcy estate'") (quoting *Pacor*, 743 F.2d at 994).

"Related to" jurisdiction over state-law matters, as the courts of appeals have understood it, is elastic and potentially expansive. Under the test applied by most courts of appeals, a proceeding is "related to" the bankruptcy case if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor*, 743 F.2d at 994. That is, "[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and . . . in any way impacts upon the handling and administration of the bankrupt estate." *Id.*[16] The "related to" provision thus can bring within the bankruptcy court's ambit matters that raise only questions of state law and that touch only remotely on the central concerns of the bankruptcy. As the *Collier* treatise—which first originated the formulation adopted in *Pacor*—commented when the 1978 Act was adopted, "Conceptually, there is no limit to the

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[16] Most of the courts of appeals have followed *Pacor*'s influential articulation of the standard for "related to" jurisdiction. *See In re Boston Reg'l Med. Ctr., Inc.*, 410 F.3d 100, 105 (1st Cir. 2005); *A.H. Robins Co.* v. *Piccinin*, 788 F.2d 994, 1002 n.11 (4th Cir. 1986); *In re Wood*, 825 F.2d 90, 93 & n.15 (5th Cir. 1987); *In re Time Constr., Inc.*, 43 F.3d 1041, 1045 (6th Cir. 1995); *Integrated Health Servs. of Cliff Manor, Inc.* v. *THCI Co.*, 417 F.3d 953, 957-958 (8th Cir. 2005); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005); *In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990); *In re Toledo*, 170 F.3d 1340, 1346 (11th Cir. 1999). A minority of circuits have adopted a somewhat different standard. *See In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992); *In re FedPak Sys., Inc.*, 80 F.3d 207, 213-214 (7th Cir. 1996). Although this Court has endorsed *Pacor*'s statement that "related to" jurisdiction extends beyond proceedings involving property of the debtor or the estate—as well as its caveat that "related to" jurisdiction cannot be limitless—it has not adopted a specific test for "related to" jurisdiction. *See Celotex*, 514 U.S. at 308 & n.6.

reach of this jurisdiction." 1 *Collier on Bankruptcy* ¶ 3.01 (15th ed. 1980); *see Pacor*, 743 F.2d at 994 (citing *Collier*).

Because the bankruptcy court is acting at the outer limits of its authority when it is exercising "related to" jurisdiction, that grant of jurisdiction inherently carries with it a risk that bankruptcy courts will improperly decide issues that, in our federal system, ought to be left to state courts to resolve. *See, e.g., Home Ins. Co.* v. *Cooper & Cooper, Ltd.*, 889 F.2d 746, 749 (7th Cir. 1989) (Easterbrook, J.) (noting that a broad construction of "related to" jurisdiction could undesirably impair "the jurisdiction of state courts over questions of state law involving persons not party to the bankruptcy"); *see also supra* Part I.B.3 (discussing cases making clear that federal grants of jurisdiction should be construed in light of federalism and comity concerns).[17]

Accordingly, as Judge Easterbrook noted, in construing the conceptually limitless grant of "related to" jurisdiction, it is appropriate to take into account the general reluctance to oust state courts of jurisdiction over purely state-law matters, absent a compelling reason to do so. That reluctance should be even more powerful in the case of probate matters, given the long-standing recognition that "the settlement and distribution of decedents' estates and the right to succeed to the ownership of realty and personalty are peculiarly matters of state law." *Harris*, 317 U.S. at 450.

That conclusion is reinforced by the absurdities that would result if petitioner's proposed distinction between diversity jurisdiction and "related to" jurisdiction were adopted. Under petitioner's construction of the statute, bankruptcy courts could not only adjudicate claims that would interfere with state probate proceedings, but could

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[17] The grant of bankruptcy jurisdiction, like other federal statutes, is properly construed in light of federalism concerns. *See, e.g., Palmer* v. *Massachusetts*, 308 U.S. 79, 85 (1939) (construing bankruptcy jurisdiction over railroads narrowly to avoid impairing the "old and familiar power of the states" over local railroad services); *BFP*, 511 U.S. at 544 (construing Bankruptcy Code not to impair states' traditional regulatory authority).

actually probate wills and, indeed, could grant divorces—since there is no logical basis for drawing any distinction between probate and domestic relations matters in this regard. It is absurd to think Congress intended to grant bankruptcy courts this sweeping authority possessed by no other federal courts, in the face of more than a century's consistent practice of excluding such matters from federal jurisdiction.

E. The Bankruptcy Abstention Provisions Do Not Implicitly Override The Limitation On "Related To" Jurisdiction Over Probate Matters

Finally, petitioner and her amici are wrong to contend that section 1334's abstention provisions resolve the applicable federalism concerns and demonstrate a congressional intent to abrogate the probate limitation in bankruptcy. Pet. Br. 37-39; U.S. Br. 28-29; Aaron Br. 13-17. The abstention provisions would not prevent bankruptcy courts from probating wills or granting divorces—authority that there is no reason to believe Congress intended to grant them.

Section 1334(c) provides for two types of abstention. *First*, section 1334(c)(1) provides for permissive abstention in "proceedings arising under title 11 or arising in or related to a case under title 11," and provides that nothing in section 1334 "prevents a district court . . . in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding." A district court's decision to abstain or not to abstain under section 1334(c)(1) is "not reviewable by appeal or otherwise." *Id.* § 1334(d).

Second, section 1334(c)(2) provides for mandatory abstention in a much more limited set of circumstances. Mandatory abstention applies only in proceedings "related to a case under title 11," if (1) the proceeding is based upon a state-law claim or a state-law cause of action; (2) the action could not have been commenced in a federal court absent jurisdiction under section 1334; (3) there is a pending state-court action capable of timely adjudication; and (4) a party makes a timely motion for abstention. A district court's decision regarding mandatory abstention is appealable only if the court declines to abstain. *See id.* § 1334(d).

Nothing in the abstention provisions suggests that Congress intended them to replace long-established limitations on federal jurisdiction over probate. Permissive abstention clearly was not intended to substitute for the probate limitation. It is a purely discretionary doctrine, expressly immunized from appellate review. The notion that Congress intended to leave the decision whether a bankruptcy court could probate a will—or grant a divorce—entirely up to that court's unreviewable discretion is simply untenable.

Nor is there reason to believe that Congress intended mandatory abstention under section 1334(c)(2) to substitute for the probate limitation. Section 1334(c)(2) applies only where a state proceeding has been commenced, and can be timely adjudicated, in the state court. Where there is no pending proceeding, however—either because the state probate proceeding has not been commenced or because it has concluded—nothing in the mandatory abstention provision would prevent a bankruptcy court from probating a decedent's will or granting a divorce.

For one hundred fifty years, the probate limitation has been understood to be a jurisdictional limitation. There are no grounds now for transforming it into a discretionary abstention doctrine. Indeed, in *Ankenbrandt* this Court expressly rejected that notion with respect to domestic relations matters, explaining that there was "no principled reason why we should retroactively concoct an abstention doctrine out of whole cloth to account for federal court practice in existence for 82 years prior to the announcement of the first abstention doctrine." 504 U.S. at 706 n.8. The Court should reach the same result here.

CONCLUSION

The judgment of the United States Court of Appeals for the Ninth Circuit should be affirmed.

Respectfully submitted,

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